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Attorneys for Plaintiffs
Ann Otsuka, Janis Keefe, Corinne Phipps and Justin Kiser

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Plaintiffs,)
vs.)
)
POLO RALPH LAUREN CORPORATION; a) **DATE:** September 21, 2007
Delaware Corporation; POLO RETAIL, LLC., a) **TIME:** 9:00 a.m.
Delaware Corporation; POLO RALPH) **JUDGE:** Hon. Susan Illston
LAUREN CORPORATION, a Delaware) **LOCATION:** Courtroom 10, 19th Floor
Corporation, doing business in California as) **450 Golden Gate Avenue**
POLO RETAIL CORP; FASHIONS OUTLET) **San Francisco, California 94102**
OF AMERICA, INC., a Delaware Corporation)
and DOES 1-500, inclusive)
)
Defendants.)
)
)

NOTICE IS HEREBY GIVEN that on September 21, 2007, at 9:00 a.m., or as soon thereafter as this matter may be heard by the above-referenced Court, plaintiffs Janis Keefe,

1 Corinne Phipps and Justin Kiser, individually and on behalf of all others similarly situated, will
 2 seek an order from the Court granting their motion to have their counsels Patrick R. Kitchin and
 3 Daniel L. Feder relieved as counsel to co-plaintiff Ann Otsuka. This motion is based under Local
 4 Rule 11-5 of the United States District Court for the Northern District of California and is based
 5 on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Patrick R.
 6 Kitchin, the complete file of pleadings in this matter, and on such other evidence and argument
 7 that may be presented at the hearing of this motion.

8 **REQUEST FOR RELIEF**

9 Plaintiffs seek an order from the Court relieving plaintiffs' counsels from all duties as
 10 counsel to co-plaintiff Ann Otsuka on the ground Ann Otsuka has failed to communicate with
 11 counsel for over seven months despite counsel's multiple efforts to contact her and gain her
 12 participation in the prosecution of this case. Ann Otsuka's failure to communicate is having and
 13 will continue to have a detrimental impact on the prosecution of the claims of the three other
 14 plaintiffs, and the class they seek to represent.

15 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
 16 **MOTION TO BE RELIEVED AS COUNSEL TO ANN OTSUKA**

17 I. **INTRODUCTION**

18 Plaintiffs Ann Otsuka, Janis Keefe, Corinne Phipps and Justin Kiser filed this class action
 19 on May 30, 2006, in the San Francisco County Superior Court, seeking various relief for alleged
 20 violations of California labor laws by Polo Ralph Lauren Corporation and its related companies.
 21 All four plaintiffs are former employees of the defendants.

22 Until approximately November 2006, plaintiff Ann Otsuka cooperated with her counsel
 23 and was in communication with them on a regular basis. In about December 2006, Ms. Otsuka
 24 stopped returning calls from counsels and would not respond to letters or emails from counsels.
 25 (See Declaration of Patrick R. Kitchin, submitted herewith, ¶ 3.)

26 In April 2007 plaintiffs' counsels filed a motion to be relieved as counsel in the San
 27 Francisco County Superior Court. That hearing was scheduled for June 19, 2007. On May 29,
 28 2007, however, defendants filed a notice of removal of the case to this Court, at which time the

1 motion to be relieved as counsel was taken off calendar by the Superior Court. Since that time,
 2 Ann Otsuka has not been in contact with plaintiffs' counsel.

3 **II. GOOD CAUSE EXISTS FOR RELIEVING PLAINTIFFS' COUNSEL AS**
 4 **COUNSEL TO PLAINTIFF ANN OTSUKA**

5 Plaintiff Ann Otsuka has not communicated with plaintiffs' counsel for more than seven
 6 months, despite plaintiffs' counsel's numerous efforts to communicate with her. She has not
 7 responded to counsel's request that she sign a California Judicial Council Substitution of Counsel
 8 form either. (See Kitchin Declaration, ¶¶ 3 and 5.)

9 To properly serve any client in any civil matter, an attorney must be able to communicate
 10 with that client. When the client decides to stop communicating with counsel, counsel can no
 11 longer serve that client's interests and needs. Such is the case here. While plaintiff's counsels do
 12 not know why Ms. Otsuka has stopped communicating with them, counsel can no longer serve her
 13 interests in this case.

14 Counsel has not received any instructions from Ann Otsuka as to her intentions in this case
 15 and does not have the authority to dismiss Ann Otsuka's claims. Counsel requests only that the
 16 Court grant their request to be relieved as counsel to Ann Otsuka. She will remain an
 17 unrepresentative plaintiff in the case. She has been advised by counsel that she may retain new
 18 counsel, serve as her own counsel or dismiss her claims. She has been advised that if she chooses
 19 to represent herself in the case, she will have duties and will be responsible for protecting her own
 20 rights.

21 **III. PLAINTIFF ANN OTSUKA HAS BEEN GIVEN REASONABLE NOTICE OF THIS**
 22 **HEARING.**

23 Rule 11-5 of the Local Rules of the United States District Court for the Northern District of
 24 California provides in relevant part:

25 **(a) Order Permitting Withdrawal.** Counsel may not withdraw from an action
 26 until relieved by order of Court after written notice has been given reasonably in
 27 advance to the client and to all other parties who have appeared in the case.

1 Ann Otsuka has had notice of counsel's efforts to be relieved as counsel since April 2007,
2 when a motion to be relieved as counsel was filed in the San Francisco County Superior Court.
3 Then, on July 20 2007, plaintiff's counsel served copies of this motion on Ann Otsuka by Federal
4 Express to her last known address, as well as on defendants' counsels. (See, Proof of Service of
5 Motion, submitted herewith.)

6 IV. CONCLUSION

7 Based on the foregoing, including the declaration of Patrick R. Kitchin and the proof of
8 service filed herewith, plaintiffs' counsels respectfully request the court enter an order relieving
9 them as counsel to plaintiff Ann Otsuka.

10 Dated: July 20, 2007

THE LAW OFFICE OF PATRICK R. KITCHIN

12 _____/S/_____
13 By: Patrick R. Kitchin